

David Clark

McGowan v Stutesman, et al.

October 3rd, 2017



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<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT</p> <p style="text-align: center;">FOR THE DISTRICT OF OREGON</p> <p style="text-align: center;">Eugene Division</p> <p>RONDA MCGOWAN, Personal) Representative for Estate of) Brian Babb, LEE BABB, CONNOR) BABB, by and through Guardian) ad litem, STEPHANIE WOODCOOK,) KAYLEE BABB,)) Plaintiffs,) v.) No. 6:17-cv-00424-TC) WILL STUTESMAN, OFFICER GROSE,) OFFICER PIESKE, Sgt. MCALPINE,) CITY OF EUGENE, a municipal) subdivision of the State of) Oregon, JANE DOE CALL, TAKER,) John and Jane Does 1-10,)) Defendants.)</p> <p style="text-align: center;">DEPOSITION OF DAVID CLARK</p> <p style="text-align: center;">October 3, 2017</p> <p style="text-align: center;">Tuesday</p> <p style="text-align: center;">2:04 P.M.</p> <p>THE DEPOSITION OF DAVID CLARK was taken at Harrang Long Gary Rudnick, 360 East 10th Avenue, Suite 300, Eugene, Oregon, before Christine Oljace, CSR, RPR, CRC, Certified Shorthand Reporter in and for the State of Oregon.</p> <p style="text-align: center;">2</p>	<p style="text-align: center;">3</p> <p>1</p> <p>2 INDEX</p> <p>3</p> <p>4 WITNESS.....PAGE</p> <p>5 DAVID CLARK</p> <p>6 BY MS. BURROWS 4</p> <p>7</p> <p>8 EXHIBITS.....MARKED</p> <p>9 Exhibit 1 Diagram; Bates No. COE 000611 16</p> <p>10 Exhibit 2 Photograph; Bates No. COE 001044 19</p> <p>11 Exhibit 3 Case Supplemental Report; Bates 21</p> <p>12 No. COE 000652</p> <p>13 Exhibit 4 Case Supplemental Report; Bates 22</p> <p>14 Nos. COE 000650 - COE 000651</p> <p>15 Exhibit 5 ICV summaries; Bates 24</p> <p>16 Nos. COE 000505 - COE 000509</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1</p> <p>2 APPEARANCES</p> <p>3 For the Plaintiffs:</p> <p>4 MS. MICHELLE R. BURROWS 420 SW Washington, Suite 300 5 Portland, Oregon 97204 503/241-1955 6 michelle.r.burrows@gmail.com</p> <p>7 For the Defendants:</p> <p>8 HARRANG LONG GARY RUDNICK, PC 360 East 10th Avenue, Suite 300 9 Eugene, Oregon 97401 541/485-0220 10 BY: MR. JEFFERY MATTHEWS jeff.matthews@harrang.com</p> <p>11</p> <p>12 Also Present:</p> <p>13 MS. JAMIE IBOA</p> <p>14 WILL STUTESMAN</p> <p>15 MATTHEW GROSE</p> <p>16</p> <p>17 Reported by:</p> <p>18 CHRISTINE OLJACE, CSR-RPR</p> <p>19 CC REPORTING & VIDEOCONFERENCING</p> <p>20 EUGENE 541/485-0111</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p>1 DAVID CLARK,</p> <p>2 having been first duly sworn to testify the truth,</p> <p>3 the whole truth, and nothing but the truth, was</p> <p>4 examined and testified as follows:</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MS. BURROWS:</p> <p>8 Q. Could you state your name for the record,</p> <p>9 please.</p> <p>10 A. David Clark. C-l-a-r-k.</p> <p>11 Q. You are in uniform today. Am I safe to</p> <p>12 assume you are a police officer?</p> <p>13 A. Yes. I am a full-time police officer in</p> <p>14 the City of Eugene.</p> <p>15 Q. Officer Clark --</p> <p>16 A. Yes.</p> <p>17 Q. -- Eugene Police Department.</p> <p>18 Have you ever had your deposition taken</p> <p>19 before?</p> <p>20 A. Not with this department, no.</p> <p>21 Q. Other departments?</p> <p>22 A. Yes.</p> <p>23 Q. How many times have you had your</p> <p>24 deposition taken?</p> <p>25 A. Once.</p>

<p style="text-align: right;">5</p> <p>1 Q. And what was the nature of that case or</p> <p>2 the purpose for your deposition?</p> <p>3 A. A witness, I believe, for maybe a DUI.</p> <p>4 Q. Was it a civil case?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. How long have you been a police</p> <p>7 officer?</p> <p>8 A. 13 years.</p> <p>9 Q. How long have you worked for the City of</p> <p>10 Eugene?</p> <p>11 A. Nine years.</p> <p>12 Q. Before the City of Eugene, where did you</p> <p>13 work?</p> <p>14 A. Burlington, Vermont.</p> <p>15 Q. That is a big leap.</p> <p>16 A. Yes.</p> <p>17 Q. Officer Clark, this is the time set for</p> <p>18 your deposition in a civil rights case that has been</p> <p>19 brought by the Estate of Brian Babb against Officer</p> <p>20 Stutesman and the City of Eugene. You are here to</p> <p>21 hopefully answer my questions about your</p> <p>22 participation in an event or an incident that</p> <p>23 occurred on March 30th of 2015.</p> <p>24 Have you reviewed any records in</p> <p>25 preparation for today's deposition?</p>	<p style="text-align: right;">7</p> <p>1 a judge here, but we do have a court reporter, and</p> <p>2 the rules of testifying are generally the same</p> <p>3 except hopefully it is not quite as formal and it is</p> <p>4 not quite as maybe intimidating to folks who don't</p> <p>5 testify all of the time, but there are some things</p> <p>6 that are a little bit different.</p> <p>7 I want you to understand all of my</p> <p>8 questions. Sometimes I may get ahead of myself and</p> <p>9 my questions may not make sense. If you don't</p> <p>10 understand what I am asking or it is somehow</p> <p>11 confusing, can you please ask me to rephrase it</p> <p>12 until we can get to sort of a meeting of the minds</p> <p>13 about what information I am trying to get from you?</p> <p>14 A. Yes.</p> <p>15 Q. Likewise, if I don't understand your</p> <p>16 answer or if I think your answer isn't what I was</p> <p>17 trying to ask, I will probably rephrase the question</p> <p>18 and try and go at it a different way.</p> <p>19 If at any point in time you need to take a</p> <p>20 break, please let me know, and we can take a break.</p> <p>21 The only rule, because this is a federal court case,</p> <p>22 is that you have to wait for the -- you have to</p> <p>23 answer the question pending, whatever I have asked</p> <p>24 you, and then we can take a break. Is that okay?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">6</p> <p>1 A. Yes.</p> <p>2 Q. What records have you reviewed?</p> <p>3 A. I reviewed the statement that I made to</p> <p>4 one of the investigating officers, I read the</p> <p>5 overall memorandum that was sent out, and then my</p> <p>6 ICV.</p> <p>7 Q. Okay. Have you reviewed anybody else's</p> <p>8 statement?</p> <p>9 A. No.</p> <p>10 Q. How long ago did you review those</p> <p>11 documents?</p> <p>12 A. Yesterday.</p> <p>13 Q. As you probably know -- because I know</p> <p>14 your attorneys relatively well, you have probably</p> <p>15 been fully advised as to what we are doing here</p> <p>16 today and what the rules of the road are. I like to</p> <p>17 go over those ever so briefly with each witness.</p> <p>18 You have testified in court before, have</p> <p>19 you not?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have a rough estimate of about how</p> <p>22 many times you have testified?</p> <p>23 A. Five to ten.</p> <p>24 Q. Okay. Well, the rules are generally the</p> <p>25 same as when you testified in court. We don't have</p>	<p style="text-align: right;">8</p> <p>1 Q. I can tell that you are a very smart</p> <p>2 witness and you are anticipating my questions. What</p> <p>3 I will just remind you ever so gently is please let</p> <p>4 me complete my question, and I will let you complete</p> <p>5 your answer, because the court reporter cannot type</p> <p>6 both of us speaking at the same time. And that is</p> <p>7 the only real reason for that rule other than some</p> <p>8 judges get really mad about it.</p> <p>9 The other little note I would make for you</p> <p>10 is that every once in a while defense attorneys</p> <p>11 object to questions in depositions. It doesn't</p> <p>12 happen a lot, but it does happen. Generally</p> <p>13 speaking, very few objections must be made in a</p> <p>14 deposition. Most objections are automatically held</p> <p>15 until the end when we go to court. If I want to use</p> <p>16 part of your transcript, Mr. Matthews can say,</p> <p>17 "Well, these questions shouldn't have been asked.</p> <p>18 This is not relevant." We do that later when we</p> <p>19 have the transcript and we have a judge present. So</p> <p>20 the general premise here is that I get as much</p> <p>21 information from you as I can and then we figure out</p> <p>22 whether it can be used later in court, which raises</p> <p>23 the next problem.</p> <p>24 You have the right to read and review the</p> <p>25 transcript this lady is creating for us if you</p>

<p style="text-align: right;">9</p> <p>1 reserve that right to do so. Once it is completed,</p> <p>2 that transcript can be used as actual evidence in</p> <p>3 any future proceeding in this case or it can be used</p> <p>4 to show conflict in testimony, in your own testimony</p> <p>5 or amongst other officers who I will be questioning,</p> <p>6 so when you read and review that transcript, please</p> <p>7 do so carefully. Is that okay?</p> <p>8 A. Yes.</p> <p>9 Q. So how long -- you said that you have</p> <p>10 worked for the City of Eugene for nine years, you</p> <p>11 said?</p> <p>12 A. Yes.</p> <p>13 Q. What positions have you held with the City</p> <p>14 of Eugene?</p> <p>15 A. Strictly patrol officer.</p> <p>16 Q. And what did you do in Vermont?</p> <p>17 A. Patrol office.</p> <p>18 Q. What department did you work for in</p> <p>19 Vermont?</p> <p>20 A. Burlington Police Department.</p> <p>21 Q. Burlington. And you were always, then, a</p> <p>22 patrol officer the entirety of your --</p> <p>23 A. Yes.</p> <p>24 Q. -- law enforcement career?</p> <p>25 When did you become certified with the</p>	<p style="text-align: right;">11</p> <p>1 A. Small business administration and studio</p> <p>2 art.</p> <p>3 Q. Are you an artist?</p> <p>4 A. Kind of, yes, at times. I was in the day.</p> <p>5 Q. And do you have any advanced degrees</p> <p>6 beyond your bachelor's?</p> <p>7 A. Yes.</p> <p>8 Q. What degrees do you have?</p> <p>9 A. I have a master's in teaching from Pacific</p> <p>10 University.</p> <p>11 Q. Have you ever taught before?</p> <p>12 A. My student teaching and I ran the</p> <p>13 education program for Boys and Girls Club of</p> <p>14 America.</p> <p>15 Q. Okay. What year did you start becoming a</p> <p>16 police officer?</p> <p>17 A. 2004.</p> <p>18 Q. What made you go from your educational</p> <p>19 background choices into law enforcement?</p> <p>20 A. I was running an after school program with</p> <p>21 Boys and Girls Clubs, got laid off on that. And</p> <p>22 worked with at-risk youth and families a lot, and</p> <p>23 when I saw a position in the paper for police</p> <p>24 department, I figured it was along the same lines of</p> <p>25 doing the work with at-risk youth and things that I</p>
<p style="text-align: right;">10</p> <p>1 Oregon DPSST?</p> <p>2 A. I believe it was November of 2008.</p> <p>3 Q. Did you have to get completely recertified</p> <p>4 or was there some reciprocity for your work in</p> <p>5 Vermont?</p> <p>6 A. There was some carryover. I had to go</p> <p>7 through a two-week lateral academy and then some</p> <p>8 in-house stuff.</p> <p>9 Q. What levels of certification do you</p> <p>10 presently hold?</p> <p>11 A. Advanced certificate.</p> <p>12 Q. Do you have plans to become certified</p> <p>13 above advanced?</p> <p>14 A. That is, I believe, as far as I can go.</p> <p>15 Q. Okay. Where did you graduate from high</p> <p>16 school?</p> <p>17 A. Portsmouth Abbey School in Portsmouth,</p> <p>18 Rhode Island.</p> <p>19 Q. Did you go to college?</p> <p>20 A. Yes.</p> <p>21 Q. Where did you go?</p> <p>22 A. University of Vermont.</p> <p>23 Q. Do you have a degree?</p> <p>24 A. Yes.</p> <p>25 Q. What is your degree in?</p>	<p style="text-align: right;">12</p> <p>1 was doing, but I was able to have a larger role in</p> <p>2 maybe the children's lives as working with their</p> <p>3 parents and things than I was in my present job.</p> <p>4 Q. Okay. May I ask what made you move from</p> <p>5 Vermont to Oregon?</p> <p>6 A. Navy brat on the East Coast and wanted to</p> <p>7 get out of the East Coast.</p> <p>8 Q. Do you like the West Coast better?</p> <p>9 A. I do.</p> <p>10 Q. Okay. So you are the first witness in</p> <p>11 this case, so I may ask you some questions about</p> <p>12 areas that I may not go into with other officers.</p> <p>13 That is the luck of the draw, Officer Clark.</p> <p>14 So do you remember the events -- at least</p> <p>15 your role in the events in the Brian Babb incident?</p> <p>16 A. Yes.</p> <p>17 Q. Could you tell me what shift you were</p> <p>18 working that day?</p> <p>19 A. I believe I was third watch. It was</p> <p>20 11 a.m. to 9 p.m.</p> <p>21 Q. How many watches does EPD have?</p> <p>22 A. At that time there was seven, but there is</p> <p>23 six now.</p> <p>24 Q. How many patrol officers were on third</p> <p>25 watch at that time?</p>

<p style="text-align: right;">13</p> <p>1 A. I don't know the staffing levels that day.</p> <p>2 Q. Do you have an immediate supervisor</p> <p>3 sergeant that you answer to?</p> <p>4 A. Right now it is Sergeant Dawson.</p> <p>5 Q. And at that time -- and again, we are</p> <p>6 talking about March 30th of 2015 -- who was your</p> <p>7 immediate sergeant?</p> <p>8 A. I believe it was Malcolm McAlpine.</p> <p>9 Q. And he was the sergeant who took over the</p> <p>10 Babb incident. Is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. How long had Sergeant McAlpine been your</p> <p>13 supervisor as of March 30th, 2015?</p> <p>14 A. Since the beginning of January.</p> <p>15 Q. Okay.</p> <p>16 A. Of the same year.</p> <p>17 Q. Three months?</p> <p>18 A. Yes.</p> <p>19 Q. Again, I am sorry about the dates. I</p> <p>20 didn't do a timeline with you, but as of 2015, how</p> <p>21 long had you been with the department?</p> <p>22 A. With the department since 2008, so</p> <p>23 approximately seven years.</p> <p>24 Q. All right. On third watch in 2015, how</p> <p>25 many sergeants were there assigned to third watch</p>	<p style="text-align: right;">15</p> <p>1 within our team, and then depending on who shows up</p> <p>2 is how that beat is covered.</p> <p>3 Q. Okay.</p> <p>4 A. But we are always called to fill in other</p> <p>5 beats as needed also. Our primary assignment is one</p> <p>6 beat.</p> <p>7 Q. And on March 30th, how many officers were</p> <p>8 assigned to beat 5, if you know?</p> <p>9 A. I would say probably at most there is two</p> <p>10 for my shift.</p> <p>11 Q. For third watch there were --</p> <p>12 A. Correct.</p> <p>13 Q. -- at least two patrol officers?</p> <p>14 A. Yes.</p> <p>15 Q. Now, do you know if there is an order</p> <p>16 within Eugene Police Department -- if there was an</p> <p>17 incident in beat 5 and you needed to draw other</p> <p>18 officers, is there an order from the location those</p> <p>19 officers are drawn or just everybody shows up?</p> <p>20 A. For a critical incident of that sort, I</p> <p>21 believe dispatch starts off if they have a beat 5</p> <p>22 car as the primary officer, and then, based on the</p> <p>23 availability of what they see on the screen, they</p> <p>24 start sending people from that.</p> <p>25 Q. Okay. Do you remember what you were doing</p>
<p style="text-align: right;">14</p> <p>1 for patrol?</p> <p>2 A. I don't know if there was one or two at</p> <p>3 the time. Malcolm was our main sergeant at the</p> <p>4 time.</p> <p>5 (Reporter clarification.)</p> <p>6 BY MS. BURROWS:</p> <p>7 Q. Now, normally on third watch, in March of</p> <p>8 2015, were there particular areas of the city that</p> <p>9 you were assigned to patrol?</p> <p>10 A. Yes.</p> <p>11 Q. Which area?</p> <p>12 A. What was called beat 5.</p> <p>13 Q. Beat 5?</p> <p>14 A. Beat 5. There are six beats within the</p> <p>15 city. Beat 5 is approximately Jefferson Street to</p> <p>16 Jerry's, Highway 99, and then 11th to Northwest</p> <p>17 Expressway, that block right there.</p> <p>18 Q. So does third watch cover everybody who</p> <p>19 works 11 to 5?</p> <p>20 A. Yes.</p> <p>21 Q. All beats?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And how many beats were working on</p> <p>24 March 30th, 2015?</p> <p>25 A. There's people assigned to every beat</p>	<p style="text-align: right;">16</p> <p>1 when you first heard about this incident on Devos</p> <p>2 Street?</p> <p>3 A. I just remember I was on patrol. I don't</p> <p>4 remember if I was currently on reports or anything.</p> <p>5 Q. Let me see if I have got it. I have got a</p> <p>6 couple of things I am going to start out with here</p> <p>7 with you. One of the things I like to do -- and I</p> <p>8 do an awful lot of police litigation. Oftentimes</p> <p>9 they do involve a very rapidly moving sort of</p> <p>10 dynamic situation, so I oftentimes will use maps or</p> <p>11 schematics to try and get a location that every</p> <p>12 officer recalls being.</p> <p>13 And I know that there was a Use of Force</p> <p>14 Review Board that did a lot of this, but what I</p> <p>15 would like you to use when I ask you my questions on</p> <p>16 this is to use your best recollection. Again, if</p> <p>17 you don't know, "I don't know" is a perfectly fine</p> <p>18 answer, and if you don't remember, that is a</p> <p>19 perfectly fine answer. I would rather have that</p> <p>20 than you just sort of guess or, you know, come up</p> <p>21 with something that is not based upon your best</p> <p>22 recollection.</p> <p>23 MS. BURROWS: So let's mark this as</p> <p>24 the first in order.</p> <p>25 (Deposition Exhibit No. 1 marked</p>

<p style="text-align: right;">17</p> <p>1 for identification.)</p> <p>2 BY MS. BURROWS:</p> <p>3 Q. That is Exhibit 1.</p> <p>4 MS. BURROWS: Officer Stutesman, I</p> <p>5 have an extra one. Do you want one?</p> <p>6 OFFICER STUTESMAN: Thank you.</p> <p>7 BY MS. BURROWS:</p> <p>8 Q. So this I took out of -- I believe it was</p> <p>9 the investigation file conducted by the Oregon State</p> <p>10 Police and a number of other agencies, and if you</p> <p>11 will look at the bottom, this is a number that was</p> <p>12 assigned by Mr. Matthews' firm. We call it lovingly</p> <p>13 a Bates stamp number. I am not sure why we still</p> <p>14 call it that, but it is basically a page number</p> <p>15 assigned in a litigation that tells us where all of</p> <p>16 the various pieces of paper are located. So I am</p> <p>17 going to refer to this document as Bates No. 611,</p> <p>18 just for the record.</p> <p>19 Do you recognize -- is this schematic</p> <p>20 familiar to you?</p> <p>21 A. Yes.</p> <p>22 Q. To the best of your ability, tell me what</p> <p>23 this is.</p> <p>24 A. This is the driveway leading to the</p> <p>25 residence of where Mr. Babb was located.</p>	<p style="text-align: right;">19</p> <p>1 MR. MATTHEWS: I put all three of them</p> <p>2 together, but maybe you didn't want them that way.</p> <p>3 BY MS. BURROWS:</p> <p>4 Q. Yeah. Let's just use the top one right</p> <p>5 now. Because I know you were not assigned right in</p> <p>6 front of the house, were you?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay.</p> <p>9 (Deposition Exhibit No. 2 marked</p> <p>10 for identification.)</p> <p>11 BY MS. BURROWS:</p> <p>12 Q. Do you recognize Exhibit 2?</p> <p>13 A. Yes.</p> <p>14 Q. What is Exhibit 2?</p> <p>15 A. It shows a larger overview satellite image</p> <p>16 of the location.</p> <p>17 Q. Have you seen this photograph before</p> <p>18 today?</p> <p>19 A. Yes.</p> <p>20 Q. And where did you last see this</p> <p>21 photograph?</p> <p>22 A. In the paperwork I received.</p> <p>23 Q. Okay. Now, let's start with the</p> <p>24 beginning. Your shift started at 11 a.m. This</p> <p>25 incident took place later in the afternoon, did it</p>
<p style="text-align: right;">18</p> <p>1 Q. Have you seen this schematic before today?</p> <p>2 A. Yes.</p> <p>3 Q. Could you tell me where you have seen this</p> <p>4 before?</p> <p>5 A. On the review paperwork that the gentleman</p> <p>6 here gave me.</p> <p>7 Q. And the gentleman, Mr. Matthews?</p> <p>8 A. Yes.</p> <p>9 Q. I don't want to know anything you and he</p> <p>10 spoke about --</p> <p>11 A. That is fine.</p> <p>12 Q. -- or any information you may have</p> <p>13 gathered from him, but this is -- there is a lot of</p> <p>14 redundancy in some of the paperwork I got, but I</p> <p>15 received a document called Use of Deadly Force</p> <p>16 Review Board, and it is both -- there is this</p> <p>17 PowerPoint presentation and then there is lots and</p> <p>18 lots and lots of paperwork in it.</p> <p>19 Do you know what you reviewed that had</p> <p>20 that schematic in it?</p> <p>21 A. By schematic, I actually meant I have seen</p> <p>22 this overview before. It was from the photographs</p> <p>23 that you have right there.</p> <p>24 Q. Okay. Let's give you a photograph too.</p> <p>25 And they are not as clear as the color photographs.</p>	<p style="text-align: right;">20</p> <p>1 not?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall where you were when</p> <p>4 you first heard about the incident on Devos Street?</p> <p>5 A. No. Just in my patrol vehicle.</p> <p>6 Q. I have received -- strike that. Let me</p> <p>7 back up.</p> <p>8 Did you write a report about what you did</p> <p>9 or saw that day?</p> <p>10 A. No.</p> <p>11 Q. Did you give an interview to someone?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall which officer you gave that</p> <p>14 interview to?</p> <p>15 A. I think it was Detective Mel Thompson.</p> <p>16 Q. And have you reviewed his summary of the</p> <p>17 interview he conducted with you?</p> <p>18 A. Yes.</p> <p>19 Q. Again, that was in the paperwork you</p> <p>20 reviewed in preparation for today?</p> <p>21 A. Yes.</p> <p>22 Q. And were you assigned call sign 3E59 that</p> <p>23 day?</p> <p>24 A. Yes.</p> <p>25 Q. Is that still your call sign?</p>

<p style="text-align: right;">21</p> <p>1 A. Yes.</p> <p>2 Q. And were you assigned the same vehicle to</p> <p>3 drive each shift, or did you just --</p> <p>4 A. In general, if it is available and not</p> <p>5 broken.</p> <p>6 Q. Okay. I have -- hang on a second. What I</p> <p>7 have -- and I may have gathered the wrong</p> <p>8 documentation, because I was trying to make sense of</p> <p>9 what -- of how all of the officers' memories were</p> <p>10 captured in this investigation.</p> <p>11 Can I hand you Exhibit 3 and see if that</p> <p>12 is at least part of the statement you gave to</p> <p>13 Officer Thompson?</p> <p>14 A. Yes.</p> <p>15 (Deposition Exhibit No. 3 marked</p> <p>16 for identification.)</p> <p>17 BY MS. BURROWS:</p> <p>18 Q. Did you give him more information than is</p> <p>19 contained on this page?</p> <p>20 A. I don't recall. I recall answering his</p> <p>21 questions.</p> <p>22 Q. Okay. And your statement was not</p> <p>23 recorded. Is that correct?</p> <p>24 A. I do not recall if he recorded our</p> <p>25 statements or not.</p>	<p style="text-align: right;">23</p> <p>1 was left out of these reports from your interview?</p> <p>2 A. I don't recall who asked me to meet up</p> <p>3 with Mrs. Woodcock at the very end to go talk to the</p> <p>4 family.</p> <p>5 MR. MATTHEWS: So just for</p> <p>6 clarification, Exhibit 4 is the interview with</p> <p>7 Officer Warden?</p> <p>8 MS. BURROWS: Yes.</p> <p>9 MR. MATTHEWS: And that is what you</p> <p>10 are -- you understand that is the interview with</p> <p>11 Officer Warden and not you.</p> <p>12 THE WITNESS: Oh, with Officer Warden,</p> <p>13 I have not reviewed that.</p> <p>14 BY MS. BURROWS:</p> <p>15 Q. Okay. Because see on page 651, the second</p> <p>16 page of Exhibit 4, it looks as if you and Warden</p> <p>17 were working together at the Devos --</p> <p>18 A. I don't have it.</p> <p>19 Q. This is Exhibit 4, the second page or</p> <p>20 throughout that report.</p> <p>21 MR. MATTHEWS: I think she is</p> <p>22 referring to this.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MS. BURROWS:</p> <p>25 Q. Were you and Officer Warden assigned to</p>
<p style="text-align: right;">22</p> <p>1 Q. Does he have to tell you if he is</p> <p>2 recording your statements?</p> <p>3 A. Policy as far as that goes, I don't know.</p> <p>4 (Deposition Exhibit No. 4 marked</p> <p>5 for identification.)</p> <p>6 BY MS. BURROWS:</p> <p>7 Q. Okay. Now, this is Exhibit 4. This is</p> <p>8 the summary of interviews with Officer Warden.</p> <p>9 MR. MATTHEWS: Can I get a copy of 3?</p> <p>10 MS. BURROWS: Oh, yes. Sorry about</p> <p>11 that.</p> <p>12 MR. MATTHEWS: Thank you.</p> <p>13 MS. BURROWS: And let me give you 4.</p> <p>14 BY MS. BURROWS:</p> <p>15 Q. Could you take a look at Exhibit 4 and</p> <p>16 tell me if you have reviewed that document prior to</p> <p>17 today.</p> <p>18 A. Yes, I have.</p> <p>19 Q. Was that also in the packet of materials</p> <p>20 you were given to review?</p> <p>21 A. Yes.</p> <p>22 Q. So when you reviewed what I have marked as</p> <p>23 3 and 4, did they appear to be accurate to you?</p> <p>24 A. Yes.</p> <p>25 Q. Do you remember whether or not anything</p>	<p style="text-align: right;">24</p> <p>1 work together on the Devos Street incident?</p> <p>2 A. Initially, yes.</p> <p>3 Q. Okay. And you actually were the one who</p> <p>4 interviewed Mrs. Woodcock?</p> <p>5 A. Did not interview her. I just went to her</p> <p>6 residence with her.</p> <p>7 Q. Okay. So let's start -- oh, one more</p> <p>8 document that might help us. I sometimes give</p> <p>9 everything to an officer ahead of time because it</p> <p>10 helps remind them of what we are talking about.</p> <p>11 Sometimes I don't just to see what they will tell me</p> <p>12 but --</p> <p>13 A. Okay.</p> <p>14 MS. BURROWS: Can I mark this as the</p> <p>15 next in order.</p> <p>16 (Deposition Exhibit No. 5 marked</p> <p>17 for identification.)</p> <p>18 BY MS. BURROWS:</p> <p>19 Q. This is Exhibit 5. This appears to be a</p> <p>20 compilation conducted by one of the investigators of</p> <p>21 ICVs. Do you know what ICV stands for?</p> <p>22 A. Intercar video, I believe.</p> <p>23 Q. Okay. And have you reviewed any of these</p> <p>24 records in preparation for today's deposition?</p> <p>25 A. The ICV video, but not these records</p>

25

1 exactly.

2 Q. All right. So you did look at your -- the

3 video from your patrol car in preparation for

4 today's deposition?

5 A. Yes.

6 Q. I had a problem. I can't figure out, of

7 the videos that I have, which belong to which car,

8 so I am going to talk to the lawyers about whether I

9 can get a better identification. I have a whole

10 bunch of them and I have looked at all of them, and

11 all I can tell is you guys drove really fast. I

12 don't know whose video belongs to which vehicle.

13 If you will look at the bottom on the

14 right lower corner where it says page 508 and 509,

15 this appears to be a review by an officer of your --

16 of the ICV from your vehicle on 3/30/2015 starting

17 at 1644 hours. Is that what it appears to be to

18 you?

19 A. Yes.

20 Q. Could you read through this for me very

21 quickly so I can ask you a couple questions.

22 A. Okay.

23 Q. Okay. Because I don't know which of the

24 videos is related to the vehicle you were driving,

25 does this summary of the ICV sound accurate to you?

26

1 A. Yes.

2 Q. All right. So now you have all of these

3 pieces of paper in front of you. I would like to go

4 through sort of a timeline with you about what you

5 did that day, and any concerns or questions I have

6 from the documents I will follow up with you.

7 You went on shift at your regular time at

8 11?

9 A. I believe so, yes.

10 Q. Do you ever get there early?

11 A. Yes.

12 Q. How early do you get to shift?

13 A. Usually about an hour.

14 Q. And what do you do in that hour before

15 shift?

16 A. Shine my boots, get my uniform ready, load

17 up my car.

18 Q. What do you put in your vehicle?

19 A. I put a patrol rifle, usually a

20 40-millimeter sponge-round gun, my patrol bag.

21 Q. Okay.

22 A. ICV mic or ICV hard drive.

23 Q. Tell me about that. What is the -- is

24 your understanding of the Eugene Police Department

25 use of the onboard video recording devices?

27

1 A. Use it whenever possible.

2 Q. Are you supposed to have it on all the

3 time or do you key it on for certain kinds of calls?

4 A. Key it on for certain kinds of calls.

5 Q. What kinds of calls do you key yours on?

6 A. People -- person contacts.

7 Q. It says in the report that I have up here,

8 the summary interview, Exhibit 3, that you were --

9 you were working and you heard officers being

10 dispatched for, quote, armed suicidal subject at

11 2248 Devos Street.

12 Could you tell me exactly what you recall

13 hearing on the dispatch?

14 A. From my recollection, I recall that there

15 was a shot fired, that the person was a combat

16 veteran, that his counselor had called into the

17 police department, and he was suicidal.

18 Q. And I just want to see if I can follow up

19 on a couple of those points that you raised.

20 A. Uh-huh.

21 Q. Did you actually hear dispatch say that

22 the subject was suicidal?

23 A. I don't recall.

24 Q. Okay. And you did hear on dispatch that

25 there was a shot fired at the Devos Street address?

28

1 A. Yes.

2 Q. Was there any information about who heard

3 the shot fired?

4 A. No.

5 Q. Was there --

6 A. Not that I recall.

7 Q. Okay. Was there any information about

8 where the shot was fired from or to?

9 A. I just recall it was inside the residence.

10 Q. So what is your understanding of someone

11 who shoots inside their house? Is that illegal?

12 A. It is.

13 Q. Just shooting a weapon inside your house?

14 A. Yes.

15 Q. Okay. Do you remember anything else

16 besides the four things that you have just

17 identified for me about that initial dispatch call?

18 A. Not at this time, no.

19 Q. Did anyone send you to the Devos Street

20 address?

21 A. I believe I sent myself.

22 Q. Okay. So you self-initiated to that call?

23 A. Correct.

24 Q. And how did you let anyone know that you

25 were on the way there?

29

1 A. I don't recall if I aired it or just went
2 en route just to stay off the radio.

3 Q. Okay. Is there some requirement that you
4 are to let dispatch know if you are en route to a
5 call?

6 A. Not that I am aware of, no.

7 Q. Okay. Did you communicate with any
8 officer at the scene that you were en route?

9 A. At the scene, no, I do not believe so.

10 Q. Okay. If you had called in your location
11 and that you were en route, how would that call have
12 sounded? What would you have said?

13 A. My recollection, I believe I heard
14 officers dispatched, and based on the officers that
15 were dispatched, I knew that we would have to get
16 people to the back of the house, and so I notified
17 dispatch that I would be responding to the west side
18 of the residence.

19 Q. Did you know what street was on the west
20 side of the residence?

21 A. Once I looked at my map, I found out that
22 it was East Irwin.

23 Q. Okay. So I have some dispatch records
24 here. What is the code for you're en route
25 somewhere? Is there a code?

30

1 A. En route, I can say Code 3 or Code 2 or
2 Code 1.

3 Q. What do those codes mean?

4 A. Code 1 is normal driving, Code 2 is using
5 your lights and/or sirens to kind of expedite, and
6 then Code 3 is lights and sirens.

7 Q. Do you remember if you called a code for
8 your --

9 A. I believe it was Code 3.

10 Q. Code 3. And did you run your sirens and
11 lights the entire time?

12 A. In this case, I don't believe I would
13 have, because you try to make it quiet when you get
14 close to the scene.

15 Q. Okay. When you said that you called in
16 that you were going to go to the Irving Street
17 location --

18 A. Irwin.

19 Q. -- Irwin, sorry -- did someone send you
20 there or did you just decide that that would be a
21 place for you to go?

22 A. I decided it would be the place to go.

23 Q. Who did you communicate that with?

24 Dispatch?

25 A. Yes.

31

1 Q. All right. And did you expect dispatch to
2 let other officers know that that is where you were?

3 A. I expected them to know where I was.

4 Q. So they were all on the same radio
5 frequencies you are?

6 A. Yes.

7 Q. At that time when you are en route to the
8 Devos Street incident, did you know whether there
9 was an officer in charge of the scene yet?

10 A. No.

11 Q. What did you know about what was going on
12 at the scene at that point?

13 A. That officers were responding to the front
14 of the scene, and I was just focused on my mission
15 of getting eyes on the back of the house.

16 Q. What was -- why did you want to get eyes
17 on the back of the house?

18 A. For containment purposes.

19 Q. Who were you containing?

20 A. The concern for Mr. Babb inside the
21 residence.

22 Q. Were you familiar with that residence
23 before you dispatched there?

24 A. No.

25 Q. Did you know Mr. Babb before you

32

1 dispatched there?

2 A. Not at all.

3 Q. Did you drive in front of Mr. Babb's home
4 prior to going to the Irwin Street address?

5 A. No.

6 Q. And you chose the Irwin Street address
7 when you looked up your map program on your onboard
8 computer?

9 A. Yes.

10 Q. Okay. And did you know whether there were
11 other officers going anywhere else besides the
12 actual address?

13 A. I do not know if anybody -- I did not hear
14 anybody going anywhere else besides the front of the
15 residence.

16 Q. Could you take a look at Exhibit 2. It is
17 the picture that looks like Google Maps, but it may
18 be something else. Could you, with my pen, if it is
19 on this picture, show me where you posted.

20 A. Originally on East Irwin right here, and
21 then I went down the driveway to about here.

22 Q. So you put an X. Would you put your
23 initials by the X. So your first position is sort
24 of off the picture a bit. Could you put a No. 1
25 there. Is that where you parked your vehicle?

<p style="text-align: right;">33</p> <p>1 A. Yes.</p> <p>2 Q. And when you got out of your vehicle --</p> <p>3 let's look at what you are wearing. Were you</p> <p>4 wearing this exact uniform that day?</p> <p>5 A. No. I did not have the exterior carrier</p> <p>6 at the time.</p> <p>7 Q. What is the exterior carrier?</p> <p>8 A. This vest right here.</p> <p>9 Q. Okay. What -- did you have something</p> <p>10 underneath your uniform, some protective gear?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have protective gear under your</p> <p>13 uniform and that exterior vest now?</p> <p>14 A. No. Just my exterior vest right now.</p> <p>15 Q. What -- is that a new part of the uniform?</p> <p>16 A. Yes.</p> <p>17 Q. When did those go into effect?</p> <p>18 A. Approximately a year ago.</p> <p>19 Q. Okay. At the time of this incident, what</p> <p>20 did your uniform look like?</p> <p>21 A. The things that -- items that are on my</p> <p>22 carrier right now were on my belt and -- except for</p> <p>23 the body camera, and I just had the uniform shirt on</p> <p>24 top with my metal badge and then the shoulder</p> <p>25 patches.</p>	<p style="text-align: right;">35</p> <p>1 you said, or did I misunderstand you?</p> <p>2 A. About a year -- these cameras went in</p> <p>3 months ago. They are relatively new to us.</p> <p>4 Q. At the time of this incident, did any</p> <p>5 officer have a personal camera?</p> <p>6 A. Not that I am aware of, no.</p> <p>7 Q. But most of your vehicles had cameras,</p> <p>8 videos onboard?</p> <p>9 A. Correct. We have a mounted camera that</p> <p>10 shows the front of the vehicle and then a camera</p> <p>11 that captures the back seat of the car.</p> <p>12 Q. Earlier when you -- we were speaking, you</p> <p>13 said you put a disc in. Is that how your video for</p> <p>14 your shift was captured?</p> <p>15 A. Yes.</p> <p>16 Q. What do you do with those discs -- what at</p> <p>17 the time did you do with those discs at the end of</p> <p>18 shift?</p> <p>19 A. We plug them in and download them.</p> <p>20 Q. Where did you plug them in?</p> <p>21 A. At headquarters.</p> <p>22 Q. Is there a designated computer to do that</p> <p>23 with?</p> <p>24 A. Any computer that has the hardware to do</p> <p>25 that.</p>
<p style="text-align: right;">34</p> <p>1 Q. Where did the radio go?</p> <p>2 A. Radio on my belt.</p> <p>3 Q. Okay. And where did the mic go?</p> <p>4 A. I am trying to remember how I used to wear</p> <p>5 it. I believe I had it up over my shoulder and then</p> <p>6 hooking on the front.</p> <p>7 Q. Okay. You have a TASER?</p> <p>8 A. Yes.</p> <p>9 Q. When did you get certified with the TASER?</p> <p>10 A. With this department, I believe shortly</p> <p>11 after I got here, so around 2009, 2010.</p> <p>12 Q. You had your sidearm on that day?</p> <p>13 A. Yes.</p> <p>14 Q. Same one?</p> <p>15 A. No. It was prior to our transition to</p> <p>16 Glock's. I believe we had Sig Sauer at that time.</p> <p>17 Q. Why did you go from Sig Sauer?</p> <p>18 A. The contract ran out, and they chose to go</p> <p>19 with these.</p> <p>20 Q. Okay. Did you have a backup weapon?</p> <p>21 A. No.</p> <p>22 Q. So -- and you didn't have the cameras at</p> <p>23 the time. Is that fair?</p> <p>24 A. Correct.</p> <p>25 Q. Those cameras went in about a year ago,</p>	<p style="text-align: right;">36</p> <p>1 Q. Okay. Did you have to save it into a</p> <p>2 particular kind of file?</p> <p>3 A. No. It automatically -- we go into COBAN,</p> <p>4 which is the program that runs it, and press on</p> <p>5 upload, and it uploads it.</p> <p>6 Q. Do you have to type in any kind of</p> <p>7 identifier for you?</p> <p>8 A. My initials and CEPDDXC.</p> <p>9 Q. Okay. So the videos are saved by your</p> <p>10 initials, then, you think?</p> <p>11 A. Yes. That is how you look them up.</p> <p>12 Q. Okay. So if we look at that document --</p> <p>13 MR. MATTHEWS: 5.</p> <p>14 BY MS. BURROWS:</p> <p>15 Q. -- Exhibit 5 and it says under Officer</p> <p>16 Clark, which is page 508 and 509, CEPDDXC. Is</p> <p>17 that --</p> <p>18 A. Yes.</p> <p>19 Q. Do you know what each of those letters</p> <p>20 stand for?</p> <p>21 A. City of Eugene Police Department. And</p> <p>22 then it is our three initials. I am David Clark.</p> <p>23 At that time or just before that time, when I first</p> <p>24 started here -- my middle initial is F., Frank.</p> <p>25 There was another person that had the middle F.,</p>

37

1 Frank, so I defaulted to an X.
 2 Q. Okay. Thank you. That is very helpful.
 3 And each day that you upload your video
 4 discs, is it also dated the day that you --
 5 A. Yes.
 6 Q. -- upload it?
 7 Okay. And if you need to retrieve those
 8 videos later like for court or something, can you do
 9 that?
 10 A. Just our own, yes.
 11 Q. Just your own?
 12 A. Yes.
 13 Q. You can't get anyone else's?
 14 A. Only supervisors.
 15 Q. And supervisor being sergeant and above?
 16 A. Correct.
 17 Q. Okay. Now, with your videos on your vest
 18 right now, how are those recorded and preserved?
 19 A. They have a built-in hard drive, and the
 20 beginning of our shift, we pull them out of a --
 21 there is a big bank of hardware things --
 22 Q. Yeah.
 23 A. -- that we plug them into upside down like
 24 this and have our name on it. We plug it in and it
 25 charges it as well as downloads it at the end of our

38

1 day. And in the morning we take it out, put it on
 2 our person, and turn it on, and then activate it as
 3 needed.
 4 Q. Okay. So it is not on all of the time?
 5 A. No.
 6 Q. How long is the battery on those?
 7 A. Rarely -- just over a shift, I found out.
 8 Q. Okay. So I know this is a little bit
 9 outside of the case, but when you plug your camera
 10 in, is your hard drive already coded with your name
 11 and --
 12 A. Yes.
 13 Q. -- identifier?
 14 A. It uploads it under my name.
 15 Q. So it just automatically uploads it as
 16 your video?
 17 A. Yes.
 18 Q. Again, can you access those videos at some
 19 point?
 20 A. Yes.
 21 Q. Can anyone else?
 22 A. I am not aware if they can or not.
 23 Q. All right. Thank you. That has been very
 24 helpful.
 25 So back to Exhibit 2, which is the

39

1 photograph. From your X1 position, were you
 2 listening to the radio or the dispatch during the
 3 time that you are at that location?
 4 A. Yes.
 5 Q. There was something in the report that
 6 said that your -- the feed, the microphone feed was
 7 unintelligible --
 8 A. Yes.
 9 Q. -- when you walked away from the vehicle.
 10 A. That's correct.
 11 Q. Do you know how that works?
 12 A. They are so finicky and they have a little
 13 wire that comes off and you have to communicate with
 14 a base antenna in the car, and a lot of times it --
 15 distance is its enemy, and it will just stop giving
 16 good feedback as soon as you get without good --
 17 just outside of a certain distance, which --
 18 Q. Is that the radio you have got on your
 19 vest? Is that the one --
 20 A. No. At the time we had a little teeny box
 21 like a pack of cigarettes that had a -- that was our
 22 portable microphone. It has a little teeny antenna
 23 on it, and it would automatically activate when we'd
 24 turn on our lights and sirens, but it is strictly
 25 audio. And then as we are walking, the little

40

1 antenna that is on our portable microphone is
 2 communicating with the antenna that is in our base
 3 car where the hard drive is.
 4 And so once you get a certain distance,
 5 kind of like walkie-talkies, it doesn't work very
 6 well at all, and so as soon as I left my vehicle and
 7 went a little further up and in different places, it
 8 will cut in and out.
 9 Q. Were you still able to communicate with
 10 other officers?
 11 A. Yes, through my main radio.
 12 Q. So that is a different system?
 13 A. Yes. The little box was strictly a
 14 microphone talking to my hard drive, and then this
 15 is the radio that I talk to dispatch and other
 16 officers with.
 17 Q. So from the first position on Exhibit 2,
 18 you said you walked up a driveway, and you drew a
 19 line that showed roughly your path. Could you,
 20 during that whole time, hear what was going on on
 21 the radio?
 22 A. Yes.
 23 Q. Could you hear things evolving?
 24 A. Yes.
 25 Q. Could you tell me how things were

<p style="text-align: right;">41</p> <p>1 evolving? And I just want to focus on the time from</p> <p>2 No. 1 position to your No. 2 position there.</p> <p>3 A. I don't remember like what was said over</p> <p>4 the radio between those two positions. I remember</p> <p>5 when I first got out of my car I was by myself, and</p> <p>6 I requested that someone cover me so that I am not</p> <p>7 by myself on the back side.</p> <p>8 There was a fence that came up along this</p> <p>9 house right here, and there was a telephone pole in</p> <p>10 between the fence and the house. So I had my long</p> <p>11 rifle right next to that telephone pole up for</p> <p>12 cover, and I was just keeping an eye from a distance</p> <p>13 towards the back of the house until a cover officer</p> <p>14 arrived.</p> <p>15 Once Officer Warden arrived, then I had a</p> <p>16 cover officer with me, and the two of us walked down</p> <p>17 the driveway to where the X is.</p> <p>18 Q. Okay. So you said that you -- this house,</p> <p>19 that is the one you pointed to and I am using my pen</p> <p>20 to indicate it right now.</p> <p>21 A. Yes.</p> <p>22 Q. There is a fence along here. Is there</p> <p>23 also a fence on -- I don't know what direction we</p> <p>24 are looking at now.</p> <p>25 A. Yes. There is fence along the whole</p>	<p style="text-align: right;">43</p> <p>1 that neighbor house?</p> <p>2 A. I believe about 6 feet.</p> <p>3 Q. Now, the -- from X1 position to X2</p> <p>4 position, how big a distance -- how long a distance</p> <p>5 is that?</p> <p>6 A. 30 yards, long driveway.</p> <p>7 Q. And on this picture it looks like there is</p> <p>8 some foliage here and some bare ground here.</p> <p>9 A. Yes.</p> <p>10 Q. Could you describe that particular lot to</p> <p>11 me?</p> <p>12 A. This is a little foliage island, this is</p> <p>13 the house, and this is their garage.</p> <p>14 Q. Did you speak to the neighbors -- I guess</p> <p>15 it is on the left side of your position 1?</p> <p>16 A. I don't believe anybody was home at the</p> <p>17 time.</p> <p>18 Q. Do you remember any of the address numbers</p> <p>19 of these houses sitting here today?</p> <p>20 A. Not right now, no.</p> <p>21 Q. Okay. That is fair.</p> <p>22 Could you, from your X2 position, see into</p> <p>23 the back of the Babb home?</p> <p>24 A. I could see -- I could see top of windows,</p> <p>25 and I believe a little side door on the side right</p>
<p style="text-align: right;">42</p> <p>1 perimeter of the back side right here.</p> <p>2 Q. So I have been in the Devos Street house,</p> <p>3 and the lot that you pointed to is a gigantic lot,</p> <p>4 is it not?</p> <p>5 A. Yes.</p> <p>6 Q. And there is a house that sits just off</p> <p>7 the picture. Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. So can you write on here -- what should we</p> <p>10 call that? Neighbor house.</p> <p>11 A. Okay.</p> <p>12 Q. How about writing that? Is it dying on</p> <p>13 you?</p> <p>14 A. No. It is good.</p> <p>15 Q. Have you ever contacted the neighbor who</p> <p>16 lives at that lot?</p> <p>17 A. Yes.</p> <p>18 Q. What is his name? Do you remember?</p> <p>19 A. I do not recall his name.</p> <p>20 Q. Tell me when you contacted that neighbor.</p> <p>21 A. When I pulled up here, there was people</p> <p>22 and children playing in this backyard.</p> <p>23 Q. Did they know what was going on here?</p> <p>24 A. No. I just asked them to go inside.</p> <p>25 Q. Now, how tall is the fence that surrounds</p>	<p style="text-align: right;">44</p> <p>1 here.</p> <p>2 Q. And the Babb home is a two-story home. Is</p> <p>3 that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Did you ever -- during the time you were</p> <p>6 posted there at X2 position, could you see anyone in</p> <p>7 those windows?</p> <p>8 A. No. The reflection was -- it was solid</p> <p>9 black, so I could not see in.</p> <p>10 Q. Okay. How close to the back fence line of</p> <p>11 the neighbor house, as we have called it, into the</p> <p>12 Babb yard could you get from the X -- from this</p> <p>13 position?</p> <p>14 A. If I wanted to, I could crawl -- go along</p> <p>15 the -- the house here and actually go into that</p> <p>16 yard.</p> <p>17 Q. Uh-huh.</p> <p>18 A. But at that time, from what I recall,</p> <p>19 there was a car parked right here, and so we were</p> <p>20 using that as cover, because that way we could still</p> <p>21 see these windows as best we could. So we were</p> <p>22 right -- hunched down behind that car.</p> <p>23 Q. Okay. I don't have any pictures from the</p> <p>24 angle where you were at X2. Could you see any</p> <p>25 officers in the front of the Babb home?</p>

<p style="text-align: right;">45</p> <p>1 A. I could not see anybody.</p> <p>2 Q. Okay. Could you hear any officers in the</p> <p>3 front of the Babb home?</p> <p>4 A. Only the ones that were yelling and</p> <p>5 talking on the loud speaker eventually.</p> <p>6 Q. Okay. You said that another officer</p> <p>7 joined you. Was that Officer Warden?</p> <p>8 A. Yes.</p> <p>9 Q. And you also said that you drew your long</p> <p>10 rifle out of the vehicle before you posted at X2.</p> <p>11 Is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Why did you do that?</p> <p>14 A. From what I recall, it was said that he</p> <p>15 had other firearms, and he had -- he had shot, and</p> <p>16 so I wanted to give myself instead of -- an</p> <p>17 advantage of being able to, if I had to respond in</p> <p>18 any way, have a better firearm to respond from</p> <p>19 further away. Handguns are meant more for close</p> <p>20 borders, and so any time that we have a reported</p> <p>21 armed person, ideally we use our long rifle, which</p> <p>22 is much more accurate from -- create distance as we</p> <p>23 can.</p> <p>24 Q. Your Sig Sauer at the time, was it a</p> <p>25 9-millimeter or a .45?</p>	<p style="text-align: right;">47</p> <p>1 A. Yes.</p> <p>2 Q. So any shot you took or would have had to</p> <p>3 have taken, you would have had to have been mindful</p> <p>4 of those officers on the other side?</p> <p>5 A. That's correct, unless it was the second</p> <p>6 story.</p> <p>7 Q. Okay. Are you a member of any specialty</p> <p>8 team with Eugene Police Department?</p> <p>9 A. Not for munitions or anything of that</p> <p>10 sort, no.</p> <p>11 Q. Use of force trainer?</p> <p>12 A. No.</p> <p>13 Q. FTO? Anything like that.</p> <p>14 A. I was not an FTO at the time.</p> <p>15 Q. You are now?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Anything -- were you ever on SWAT?</p> <p>18 A. No.</p> <p>19 Q. In Vermont?</p> <p>20 A. No.</p> <p>21 Q. Any kind of reconstruction team or</p> <p>22 specialty investigative team?</p> <p>23 A. No.</p> <p>24 Q. Okay. Was -- so you said that Officer</p> <p>25 Warden is -- was on the SWAT team at the time, and</p>
<p style="text-align: right;">46</p> <p>1 A. .45.</p> <p>2 Q. And the long rifle you had, was it an</p> <p>3 AR-15?</p> <p>4 A. Yes.</p> <p>5 Q. And you also said that you had the</p> <p>6 shotgun?</p> <p>7 A. The 40-millimeter. It is a -- larger</p> <p>8 rounds you see for a grenade launcher looking thing.</p> <p>9 Q. Yeah. I had a client who got shot by one,</p> <p>10 and it is a pretty intense weapon.</p> <p>11 So do you know how Officer Warden was</p> <p>12 armed when he arrived?</p> <p>13 A. I don't believe offhand. He usually</p> <p>14 carries a different kind of rifle since he is on</p> <p>15 SWAT.</p> <p>16 Q. Do you know what kind of rifle he had?</p> <p>17 A. I don't. Fancy.</p> <p>18 Q. Did anyone give you directions? And I am</p> <p>19 thinking of Sergeant McAlpine or some other command</p> <p>20 officer. Did anyone give you any directions to</p> <p>21 where you should post or what weapon or what you</p> <p>22 should be doing, looking for?</p> <p>23 A. No.</p> <p>24 Q. Okay. Did you know that there were other</p> <p>25 officers on the other side of Mr. Babb's house?</p>	<p style="text-align: right;">48</p> <p>1 he had a different kind of rifle with him. Do you</p> <p>2 know what kind he had?</p> <p>3 A. I don't.</p> <p>4 Q. All right. Do you know where Officer</p> <p>5 Warden posted up when you were at the X2 position?</p> <p>6 A. He came to meet me, and we were both there</p> <p>7 together behind the car.</p> <p>8 Q. And this is a really unfair lawyer</p> <p>9 question.</p> <p>10 So you posted behind this car. What can</p> <p>11 you see? What angle do you have?</p> <p>12 A. Mostly the second story.</p> <p>13 Q. Okay. Were you aware of where all of the</p> <p>14 civilians were at the time you were at X2?</p> <p>15 MR. MATTHEWS: Objection. Vague as to</p> <p>16 all of the civilians.</p> <p>17 MS. BURROWS: That is a fair</p> <p>18 objection. Let me back up.</p> <p>19 BY MS. BURROWS:</p> <p>20 Q. You said there were civilians in the</p> <p>21 backyard, and you asked them to go inside. Is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Were you aware of any other civilians</p> <p>25 around your position?</p>

<p style="text-align: right;">49</p> <p>1 A. There was a crowd gathering eventually</p> <p>2 here where I am making a circle.</p> <p>3 Q. I know which video is yours now, because I</p> <p>4 saw them gathering.</p> <p>5 Were they gathering as the events were</p> <p>6 taking place?</p> <p>7 A. Yes.</p> <p>8 Q. And did the crowd get biggest when the</p> <p>9 shot rang out or just before?</p> <p>10 A. I don't know. My attention was over here.</p> <p>11 Q. Right. How -- were you concerned that</p> <p>12 those civilians might be in danger from any shooting</p> <p>13 from the Babb house?</p> <p>14 A. Yes.</p> <p>15 Q. Did either you or Officer Warden make any</p> <p>16 attempt to clear those civilians out of the street?</p> <p>17 A. I yelled to them to go inside their</p> <p>18 residence.</p> <p>19 Q. Did they do that?</p> <p>20 A. No.</p> <p>21 Q. Okay. Did you radio to anyone that you</p> <p>22 needed some help with the civilians and security</p> <p>23 back here?</p> <p>24 A. Not that I recall, no.</p> <p>25 Q. Do you know whether Officer Warden did?</p>	<p style="text-align: right;">51</p> <p>1 Q. Okay. Because nobody knew who fired that</p> <p>2 round. Correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And you were trying --</p> <p>5 A. Initially.</p> <p>6 Q. Okay. I have read that there were some</p> <p>7 officers on rooftops. Did you see any officer on</p> <p>8 any rooftops from your X1 or X2 position?</p> <p>9 A. No.</p> <p>10 Q. Did you hear any information on the radio</p> <p>11 about officers who had posted on rooftops?</p> <p>12 A. Not that I recall, no.</p> <p>13 Q. If I asked you today if you knew which</p> <p>14 officers posted on rooftops, would you be able to</p> <p>15 answer that question?</p> <p>16 A. A sniper officer. I don't recall which</p> <p>17 one, specifically which name.</p> <p>18 Q. Were you aware that there was someone in a</p> <p>19 sniper position?</p> <p>20 A. Not at the time, no.</p> <p>21 Q. Did you later learn that someone was in a</p> <p>22 sniper position?</p> <p>23 A. I don't recall.</p> <p>24 Q. Okay. All right. Now, at some point the</p> <p>25 BearCat was brought in. Do you know where the</p>
<p style="text-align: right;">50</p> <p>1 A. Not that I recall, no.</p> <p>2 Q. How long were you in this X2 position?</p> <p>3 A. Until I -- until after the scene had</p> <p>4 stabilized.</p> <p>5 Q. Did you hear the shot ring out that we</p> <p>6 eventually --</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Prior to -- I don't know exactly</p> <p>9 how long the dispatch records say you were there,</p> <p>10 but the video is about two, two and a half hours on</p> <p>11 your rig. Do you know how long you were at the X2</p> <p>12 position today?</p> <p>13 A. I would guess and say 45 minutes. It</p> <p>14 would be a guess based on the -- if it is a two-hour</p> <p>15 video from when it showed me going around to the</p> <p>16 front of the building and then kind of moving around</p> <p>17 in my perimeter spots.</p> <p>18 Q. Okay. So in that period of time that you</p> <p>19 were at the X2, however long that was, could you</p> <p>20 tell me what you heard on the radio as the situation</p> <p>21 evolved?</p> <p>22 A. I heard on the radio just updates as far</p> <p>23 as observations of officers in the front of the</p> <p>24 building and what they saw and heard and -- up until</p> <p>25 the gunshot and then the roll call that happened.</p>	<p style="text-align: right;">52</p> <p>1 BearCat went?</p> <p>2 A. Just after I moved around front and</p> <p>3 actually saw everything. I didn't see this until</p> <p>4 everything had stopped.</p> <p>5 Q. Okay. From your X2 position, could you</p> <p>6 see the BearCat --</p> <p>7 A. No.</p> <p>8 Q. -- come down the road?</p> <p>9 No?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you hear anything over the</p> <p>12 radio about the BearCat arriving or being sent for?</p> <p>13 A. Probably, but I don't recall what the</p> <p>14 specifics were.</p> <p>15 Q. Okay. All right. Now, there is some</p> <p>16 crazy information about the therapist of Mr. Babb</p> <p>17 being on the phone with him during a large portion</p> <p>18 of this incident. Do you remember receiving</p> <p>19 information about the therapist being on the phone</p> <p>20 with Mr. Babb?</p> <p>21 A. From what I can recall, I remember her --</p> <p>22 being told that she was on the phone and then she</p> <p>23 had lost contact and then she wasn't able to regain</p> <p>24 that contact with him.</p> <p>25 Q. Do you know who she was on the phone with?</p>

53

1 Do you have any information about that?

2 A. I assume it was Mr. Babb.

3 Q. I mean -- that was a bad question. Let me

4 back up a couple steps.

5 So the therapist called someone. Do you

6 know whether it was dispatch?

7 A. Dispatch. It would be dispatch.

8 Q. Were you able to hear any portion of the

9 conversation between Ms. Higgins, the therapist, and

10 dispatch?

11 A. No.

12 Q. Were you able to hear any portions of the

13 conversation between the therapist and any officers

14 at the scene?

15 A. No.

16 Q. How about between the therapist and

17 Mr. Babb?

18 A. No.

19 Q. So all you knew is that there was some

20 kind of conversation, but you didn't know anything

21 more than that basic fact?

22 A. That's correct.

23 Q. Okay. Could you hear Mr. Babb yelling

24 inside the house?

25 A. Yes.

54

1 Q. Could you tell me what you heard him yell?

2 A. From my recollection, "Fuck you," things

3 like "Fuck you," "Go away," and "I didn't do

4 anything wrong."

5 Q. Okay. Did he make any -- did he yell out

6 the back windows of the house in your direction?

7 A. I never saw him or heard him yelling from

8 the back of the house.

9 Q. Did you ever see any officer approach the

10 back of Mr. Babb's house at any time?

11 A. Officer Warden, after the incident had

12 stopped.

13 Q. What did he -- what did you see Warden do?

14 A. I helped him over a back fence.

15 Q. And where did he go?

16 A. Somewhere in the yard. I did not follow

17 him.

18 Q. Did you see him go inside the house?

19 A. I did not see him. I just helped him over

20 the fence.

21 Q. Okay. And that was after the shot?

22 A. Yes.

23 Q. Why did he go in there?

24 A. I think he was going up front in case they

25 needed more people to clear the residence or help

55

1 with any of the officers in the front.

2 Q. So other than the neighbors here in the

3 neighbor house we have identified, the folks

4 gathering on the street behind you, could you see

5 any other civilians from post -- your position 2?

6 A. No.

7 Q. Okay. Did you learn -- from your

8 position 2 until the shot was fired, did you learn

9 anything more about Mr. Babb through the dispatch or

10 your other officers?

11 A. Not that I recall besides the initial

12 information.

13 Q. Did you learn at any point that he was a

14 war veteran?

15 A. Yes.

16 Q. Do you remember when you obtained that

17 information?

18 A. I believe I heard that prior, as we were

19 dispatched, as the initial information was let out.

20 Q. Did you learn anything about his mental

21 health or his medical problems?

22 A. Medical, no. Mental health, just

23 assumptions from him being a combat war vet and

24 talking to that counselor.

25 Q. Okay. Did anyone -- did you receive any

56

1 information from anyone while you are posted here

2 that Mr. Babb had been -- suffered some neurologic

3 damage?

4 A. I seem to recall there may have been a --

5 some talk of that, but I don't remember how I

6 received the information.

7 Q. Okay. Anybody -- any information while

8 you are on scene on that day that Mr. Babb had PTSD

9 or other mental health issues?

10 A. It may have been all associated with the

11 dissemination of information that we received.

12 Q. Do you remember who may have disseminated

13 that information to you?

14 A. All my information would come from

15 dispatch.

16 Q. So I have never been a police officer. I

17 have never been on a scene like this. You are out

18 there. It is a very tense situation. And from your

19 position, you may not know exactly what is going on

20 in the front of the house. So tell me how

21 information is getting to you, all information. Is

22 it all through dispatch or is some of it from other

23 officers?

24 A. I am strictly hearing whatever is being

25 talked over the radio.

<p style="text-align: right;">57</p> <p>1 Q. And that would include other officers?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Was there a lot of information</p> <p>4 being exchanged from other officers on the radio?</p> <p>5 A. There was conversations, but I don't know</p> <p>6 with "a lot." They would talk about their movement</p> <p>7 or their observations, but a lot is relative to the</p> <p>8 chaotic scene.</p> <p>9 Q. Right. Okay.</p> <p>10 At some point were you aware that Sergeant</p> <p>11 McAlpine was on scene? Am I saying that right?</p> <p>12 A. McAlpine.</p> <p>13 Q. McAlpine?</p> <p>14 A. Yes.</p> <p>15 Q. About how long after you had posted at X2</p> <p>16 was Sergeant McAlpine on scene?</p> <p>17 A. I have no idea.</p> <p>18 Q. Was it after you arrived there?</p> <p>19 A. I couldn't tell you if he was -- it was</p> <p>20 all close in proximity.</p> <p>21 Q. Okay. Did a lieutenant arrive at some</p> <p>22 point?</p> <p>23 A. I am sure many of them did.</p> <p>24 Q. Do you remember a lieutenant arriving on</p> <p>25 board and hearing them on the radio?</p>	<p style="text-align: right;">59</p> <p>1 recall them seeing him open the door and then close</p> <p>2 it maybe at one point and then yelling at them, but</p> <p>3 not offhand that I can make any quotes or anything.</p> <p>4 Q. Okay. Were you ever asking on the radio,</p> <p>5 "What is going on? Let us know." I mean, you are</p> <p>6 in the back.</p> <p>7 A. Correct.</p> <p>8 Q. So how are you finding out what you need</p> <p>9 to know, whether you need to move up or go around or</p> <p>10 what you need to do?</p> <p>11 A. I am not moving anywhere until I am told</p> <p>12 to do so or I have information that he is fleeing</p> <p>13 out the back coming my way or anything. I am just</p> <p>14 letting them do their thing, and I just keep an eye</p> <p>15 on my area and that is it.</p> <p>16 Q. Did anyone give you a physical description</p> <p>17 of Mr. Babb?</p> <p>18 A. Not that I recall, no.</p> <p>19 Q. So you -- if someone had come back where</p> <p>20 you were, how would you know it was Mr. Babb?</p> <p>21 A. I believe the only information that we had</p> <p>22 of people in the house was Mr. Babb and possibly his</p> <p>23 roommate.</p> <p>24 Q. Was there a point in time in this incident</p> <p>25 that the roommate, Mr. Antonini, was -- left the</p>
<p style="text-align: right;">58</p> <p>1 A. I don't recall hearing them on the air,</p> <p>2 but I believe Lieutenant Reynolds was one of the</p> <p>3 lieutenants that was on the scene.</p> <p>4 Q. Okay. So you heard Mr. Babb yelling,</p> <p>5 "Fuck you, I didn't do anything wrong, go away."</p> <p>6 Did you hear any officers yelling at him or</p> <p>7 communicating with him?</p> <p>8 A. I heard the BearCat talking to him.</p> <p>9 Q. How did you know it was the BearCat?</p> <p>10 A. It is a very obvious PA sound voice.</p> <p>11 Q. Were there other devices there that you</p> <p>12 could hear people talking on to Mr. Babb?</p> <p>13 A. No.</p> <p>14 Q. Just the -- just the BearCat?</p> <p>15 A. Just the PA, yes.</p> <p>16 Q. Do you recognize the voice of the officer</p> <p>17 using the PA on the BearCat?</p> <p>18 A. I don't recall now.</p> <p>19 Q. Do you remember what was said over the</p> <p>20 BearCat PA?</p> <p>21 A. I don't recall now, no.</p> <p>22 Q. Could you hear on the radio other officers</p> <p>23 saying anything about what they observed Mr. Babb</p> <p>24 doing or saying?</p> <p>25 A. Not saying. I recall -- I want to say I</p>	<p style="text-align: right;">60</p> <p>1 house?</p> <p>2 A. Yes.</p> <p>3 Q. About how far into your position here was</p> <p>4 Mr. Antonini removed from the house or left the</p> <p>5 house?</p> <p>6 A. I couldn't tell you exactly.</p> <p>7 Q. Had you been at X2 when Mr. Antonini left?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. How did you learn that Mr. Antonini left</p> <p>10 the house?</p> <p>11 A. I would have heard it over the radio.</p> <p>12 Q. There is information that Mr. Antonini</p> <p>13 spoke with some of the officers in front of the Babb</p> <p>14 home. Were you given any information about what</p> <p>15 Mr. Antonini was telling them?</p> <p>16 A. They would have aired that over the radio</p> <p>17 as far as if he had any insight into Mr. Babb's</p> <p>18 condition, or if there was anybody else in the house</p> <p>19 and things of that sort, they would have aired that</p> <p>20 through their interviews.</p> <p>21 Q. As we know now, there apparently were</p> <p>22 conversations and Mr. Antonini told officers -- I</p> <p>23 believe Sergeant Vinje, maybe Officer Pieske, and</p> <p>24 Grose and maybe Officer Stutesman -- that Mr. Babb</p> <p>25 had a lot of weapons and that he was very agitated</p>

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1 and that Mr. Antonini had never seen him this bad.
2 Do you remember receiving any of that type of
3 information over the radio?

4 A. Not specifically over the radio. I
5 imagine it would have been aired, but between
6 preparing for today and my recollection of what was
7 said over the radio that day, I don't know when
8 exactly that information came out.

9 Q. But sitting here today, you do know that
10 some of that information was given to you. You just
11 don't know when?

12 A. Yes.

13 Q. Okay. Did you -- were you privy to any
14 radio traffic where officers were discussing whether
15 to retreat?

16 A. I don't recall that at all.

17 Q. Were you privy to any communications
18 whether anyone was prepared to go into the house and
19 forcibly remove Mr. Babb?

20 A. I don't recall them mentioning that.

21 Q. What was the plan? When you are at X2,
22 did anyone tell you, well, here is what we are going
23 to do? We are going to try certain things and then
24 we are going to go to this stage? What was the plan
25 as far as you know?

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1 A. That is something that is not always
2 discussed on the radio. That is something that they
3 are conversing about in the front, so I am just
4 waiting for them to air anything that would be
5 relevant to me in my role of any plan.

6 Q. So have you been involved in any other
7 kinds of situations where there was a barricaded
8 individual?

9 A. Yes.

10 Q. How many times have you been involved in
11 that kind of situation?

12 A. I would say several.

13 Q. Okay. And is there usually a strategic
14 plan developed prior to taking any big action?

15 A. There is always steps that are taken, yes.

16 Q. Could you -- in your experience in those
17 other barricaded individual situations, what are the
18 steps that are normally gone through?

19 A. It is transforming as time goes on.

20 Q. I get that part.

21 A. Usually if a person is only a threat to
22 himself and not to anybody outside of the house,
23 and they are home alone, then we do not force an
24 issue. We -- they are only a danger to himself,
25 and we try to keep verbal communication with them

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1 but not force an issue.

2 When there is a case where there is
3 neighbors or outside people, safety is an issue,
4 then usually it has been my experience that we will
5 stay on scene and try to act as the first line of
6 protection for all of the local area residents.

7 Q. So I understand that experience and
8 judgment and training go into making a lot of those
9 decisions on scene. When you say that when someone
10 is only a threat to themselves, does -- what are the
11 hallmarks of that situation?

12 A. If I can use an example --

13 Q. Sure.

14 A. We go into a house. I am contacting you,
15 who has a knife and locked himself in the bathroom.
16 There is nobody else in the house. You do not want
17 to answer the door. You don't want anything to do
18 with us.

19 In that case, you are only a threat to
20 yourself. We are not going to go and force an issue
21 of going into that house to try to save you if that
22 means putting us at risk and forcing the escalation
23 of the situation.

24 Q. Okay.

25 A. We will just either walk away, try to make

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1 phone contact until another person who does not have
2 a choice in the matter is at risk.

3 Q. Does the presence of weapons in such a
4 situation change your evaluation of the risk?

5 A. Yes.

6 MR. MATTHEWS: Objection. Vague as to
7 weapons. He just described a weapon, which was a
8 knife.

9 BY MS. BURROWS:

10 Q. Guns.

11 A. Yes.

12 Q. So if someone is barricaded in a house and
13 they have guns, do you approach that situation
14 differently than someone in the example that you
15 gave me with the knife?

16 A. Yes.

17 Q. And how do you approach that situation?

18 A. We would have a larger setback.

19 Q. What do you mean by setback?

20 A. Instead of standing at the front door and
21 knocking, we would try to call inside and try to
22 make contact from a further distance.

23 Q. So in a situation with a suspect with a
24 gun who is barricaded, is part of the plan to remove
25 the neighbors who are around and in immediate

<p style="text-align: right;">65</p> <p>1 danger?</p> <p>2 A. Or at least shelter in place.</p> <p>3 Q. What does that mean, shelter in place?</p> <p>4 A. Have them go inside their house and stay</p> <p>5 inside their house.</p> <p>6 Q. Okay. And what was your understanding of</p> <p>7 how the Eugene Police Department, the folks on the</p> <p>8 ground on this day, how did they view this</p> <p>9 situation?</p> <p>10 A. My understanding is that if it was just</p> <p>11 him with a gun, that is just him with a gun. Once</p> <p>12 there was a shot fired, that changes, because it</p> <p>13 shows an actual intent to use a weapon of some sort.</p> <p>14 And so it changes it from just you inside your house</p> <p>15 suicidal with a gun to you have already shot once.</p> <p>16 We don't know where that shot went, and if that</p> <p>17 affects, you know, your state of wanting to harm</p> <p>18 yourself or possibly others by actually firing the</p> <p>19 gun. So we have a duty to protect the area around.</p> <p>20 Q. Okay. Now, I know that you told me</p> <p>21 earlier that some of your initial information was</p> <p>22 that Mr. Babb had fired a shot.</p> <p>23 A. Yes.</p> <p>24 Q. Do you know when that shot occurred?</p> <p>25 A. No. Prior to our arrival.</p>	<p style="text-align: right;">67</p> <p>1 A. I don't recall if it was by phone or he</p> <p>2 was the one on the PA.</p> <p>3 Q. Okay. Do you know what kind of</p> <p>4 communication Officer Grose had with Mr. Babb, if</p> <p>5 any?</p> <p>6 A. Not -- just I would assume the normal</p> <p>7 crisis negotiation verbiage of we don't mean you any</p> <p>8 harm, please come out unarmed, those sort of things,</p> <p>9 but I can't quote right now, no.</p> <p>10 Q. Did you hear any of that kind of language?</p> <p>11 A. That kind of language, yes.</p> <p>12 Q. How did you -- where was that?</p> <p>13 A. Through the PA.</p> <p>14 Q. Okay. Do you know what Mr. Babb's</p> <p>15 response was to those?</p> <p>16 A. I believe it was a lot of the -- that we</p> <p>17 were hearing him just yelling of, "Go away. I</p> <p>18 didn't do anything wrong. Fuck you." A lot of</p> <p>19 swears.</p> <p>20 Q. Okay. Now, at some point Mr. Babb was</p> <p>21 shot. Do you recall hearing Officer Stutesman say</p> <p>22 anything just prior to the shot?</p> <p>23 A. Not that I recall, no.</p> <p>24 Q. I am just about done with you. Hang on a</p> <p>25 second.</p>
<p style="text-align: right;">66</p> <p>1 Q. Was it that day or days preceding this</p> <p>2 incident?</p> <p>3 A. My understanding was that day.</p> <p>4 Q. And do you know where you got that</p> <p>5 information from?</p> <p>6 A. That was aired over the radio.</p> <p>7 Q. Okay. And that is all you know is that it</p> <p>8 came over the radio?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know if it was accurate?</p> <p>11 A. Not without walking in the house, no.</p> <p>12 Q. Okay. So during the time that the police</p> <p>13 department is at Mr. Babb's home, did he ever once</p> <p>14 fire anything -- any weapons towards any officer or</p> <p>15 civilian?</p> <p>16 A. Not that I heard.</p> <p>17 Q. Now, during the time of this incident, I</p> <p>18 have read that someone from the Eugene Police</p> <p>19 Department with expertise in hostage negotiation and</p> <p>20 crisis management showed up. Do you know who that</p> <p>21 person --</p> <p>22 A. I believe that was Officer Grose.</p> <p>23 Q. And did you hear Officer Grose communicate</p> <p>24 with Mr. Babb during the time that you were at the</p> <p>25 scene?</p>	<p style="text-align: right;">68</p> <p>1 After the shot is fired, did you receive</p> <p>2 any -- any communications from anyone?</p> <p>3 A. Me personally?</p> <p>4 Q. Yeah.</p> <p>5 A. No. No one called out to me except for</p> <p>6 the roll call that we did.</p> <p>7 Q. All right. Let's talk about that. That</p> <p>8 is kind of where I was going, but I was thinking</p> <p>9 about something else.</p> <p>10 Did you know who fired the shot?</p> <p>11 A. Not initially, no.</p> <p>12 Q. When you said a roll call was called, can</p> <p>13 you tell me what happened after the shot is fired,</p> <p>14 in the next few minutes after that?</p> <p>15 A. It was quiet, and then I don't remember if</p> <p>16 it was my confusion or confusion on the radio as far</p> <p>17 as what the shot -- who fired the shot, but then I</p> <p>18 believe Sergeant McAlpine said let's do a roll call</p> <p>19 to find out -- make sure that everybody is</p> <p>20 responding back. And so that is what everyone --</p> <p>21 they started calling out -- everyone started calling</p> <p>22 out their designated --</p> <p>23 Q. Did this position at X2 have a position</p> <p>24 number?</p> <p>25 A. Position number? No.</p>

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1 Q. Sometimes in a situation different
2 officers will be assigned to different locations and
3 they will be given a position number.
4 A. No.
5 Q. Who knew you were here besides yourself
6 and Officer Warden?
7 A. Dispatch.
8 Q. Did you assume that Officer McAlpine knew
9 where you were, Sergeant --
10 A. Yes.
11 Q. Okay. Now, when you say a roll call, was
12 that just -- I am not exactly sure how that worked.
13 Can you explain to me?
14 A. Usually they will say, "We will perform a
15 roll call." Dispatch will have a list of all of the
16 officers on scene. They will call out a number.
17 3 Edward 59, that is me. I will say "Code 4."
18 Q. Okay. Code 4 means?
19 A. It means I am okay.
20 Q. Okay. How many officers then called in
21 Code 4?
22 A. I don't recall.
23 Q. How long did it take to call roll call?
24 A. Probably a couple minutes.
25 Q. And at some point after roll call, did you

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1 learn who fired the shot and what had happened?
2 A. Yes. I believe I heard Officer Stutesman
3 over the radio say, "He had a rifle" or something.
4 I don't remember what the quote was.
5 Q. So you learned it was -- Stutesman had
6 shot Mr. Babb?
7 A. Yes.
8 Q. What -- after that shot, what did you do?
9 A. I stayed there and then I heard them make
10 a plan to go up and make contact with Mr. Babb and
11 clear the residence.
12 Q. When you say they were going to make a
13 plan, who was --
14 A. Whoever was on the front of the house.
15 Q. Could you hear what was going on?
16 A. No.
17 Q. Did you hear the BearCat move?
18 A. No.
19 Q. Hear any crashing, banging?
20 A. No.
21 Q. How long did it take from the time that
22 they said they were going to make their plan until
23 you left your position at X2?
24 A. I don't remember a period of time.
25 Q. Huh?

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1 A. I don't remember how long that took or
2 would have taken.
3 Q. What did you do after you left X2?
4 A. I helped Officer Warden over the fence,
5 and then I drove around to the front of the
6 residence and was asked to sit in my vehicle.
7 Should I just do a No. 3?
8 Q. Do an X3. Yes.
9 A. Approximately up here. I don't remember
10 exactly where it was.
11 Q. Okay.
12 A. And I stayed there on perimeter while the
13 special teams and IDFIT and people came and arrived
14 and supervisors, and then once that was calmer, I
15 moved down to approximately No. 4, where some of the
16 family members were.
17 Q. Mr. Babb's family members?
18 A. Yes. His ex-wife, I believe, was there.
19 Q. Did you contact any of those family
20 members?
21 A. Yes. I was asked to make contact with
22 them. I don't remember exactly what I was asked to
23 do for them, but I made contact with them. And at
24 some point they said that they were going to go and
25 let his son know that he had died, and I offered --

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1 I asked them if it would help at all if an officer
2 also went with them, not for safety purposes but
3 just a kind of showing of us also. And she said she
4 thought it might, and so I went with her to her
5 house.
6 Q. And did you speak to Connor Babb?
7 A. I did not speak to him that I recall, no.
8 I was just there as -- if he approached me, I was
9 going to talk to him, but I just kind of wanted to
10 be there to kind of show support for him.
11 Q. How did he take the news of his father's
12 death?
13 A. From what I recall, he got very upset and
14 went to his room and closed the door.
15 Q. Did he start crying?
16 A. From what I recall. I remember the mom
17 going and talking to him inside the room, but
18 nothing more than that.
19 Q. How long did you stay at the house?
20 A. Probably 15 minutes.
21 Q. Did you write any kind of report on
22 your --
23 A. No.
24 Q. -- on that? Okay.
25 How long after the incident were you

<p style="text-align: right;">73</p> <p>1 interviewed by officers?</p> <p>2 A. I would have to look at the time stamp</p> <p>3 of -- I don't know which day Detective Thompson</p> <p>4 interviewed me.</p> <p>5 Q. Okay.</p> <p>6 A. There is a time stamp at the top that says</p> <p>7 April 6, but I am not sure if that is the day we</p> <p>8 spoke or not.</p> <p>9 Q. Okay. Was it close in time to the</p> <p>10 incident?</p> <p>11 A. I believe so.</p> <p>12 Q. Have you spoken to Officer Warden --</p> <p>13 MR. MATTHEWS: Michelle, you have</p> <p>14 Exhibit 3?</p> <p>15 MS. BURROWS: Yes.</p> <p>16 MR. MATTHEWS: Where the narrative</p> <p>17 starts, it says on March 30th, 2015, at</p> <p>18 approximately 2130.</p> <p>19 BY MS. BURROWS:</p> <p>20 Q. So does that jive with your memory,</p> <p>21 about --</p> <p>22 A. Yes.</p> <p>23 Q. -- a few hours after the incident?</p> <p>24 A. Yes.</p> <p>25 Q. All right. It was at the Eugene Police</p>	<p style="text-align: right;">75</p> <p>1 Q. I think I am just about done with you.</p> <p>2 This incident made the newspapers, made</p> <p>3 the television news, very high publicity at the</p> <p>4 time. Were you ever approached by any neighbors or</p> <p>5 citizens to ask about this incident?</p> <p>6 A. They always talk about it, but I don't get</p> <p>7 involved in it. I just say it was a very, very sad</p> <p>8 event and just leave it at that. My opinion steps</p> <p>9 aside in situations like this.</p> <p>10 Q. Okay. So while you were sitting out in</p> <p>11 the X3 and 4 positions, were -- was there a crime</p> <p>12 scene perimeter created at the Babb house?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever go inside that crime scene</p> <p>15 perimeter?</p> <p>16 A. No.</p> <p>17 Q. So you never signed into the crime scene?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And if you had gone inside the</p> <p>20 perimeter, you would have had to be logged in?</p> <p>21 A. Notify the person keeping the journal.</p> <p>22 Q. Did you take any evidence, secure any</p> <p>23 evidence?</p> <p>24 A. Not that I recall, no --</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">74</p> <p>1 Employees Association business office?</p> <p>2 A. Correct.</p> <p>3 Q. And you had a representative there?</p> <p>4 A. Yes.</p> <p>5 Q. Did you ask to have a representative?</p> <p>6 A. No.</p> <p>7 Q. They just showed up?</p> <p>8 A. They always show up.</p> <p>9 Q. Okay. Did they take your picture or</p> <p>10 anything?</p> <p>11 A. Not my picture, no.</p> <p>12 Q. Okay. So since the incident, have you</p> <p>13 spoken with any of the officers who were at the</p> <p>14 scene about the incident?</p> <p>15 A. No. Well, not -- you mean specifics?</p> <p>16 Not, you know, a major debrief or anything of that</p> <p>17 sort. Of course we talk about it.</p> <p>18 Q. Were you -- other than the interview that</p> <p>19 is documented on Exhibit 3, were you interviewed as</p> <p>20 part of the use of force review?</p> <p>21 A. No. I believe it was just my interview</p> <p>22 with Detective Thompson.</p> <p>23 Q. All right. Have you ever been personally</p> <p>24 involved in any use of force, deadly force?</p> <p>25 A. No.</p>	<p style="text-align: right;">76</p> <p>1 A. -- besides my hard drive.</p> <p>2 Q. From your --</p> <p>3 A. ICV.</p> <p>4 Q. Okay. And normally, if there is a crime</p> <p>5 scene that is investigated, there is a forensic team</p> <p>6 that collects evidence. Is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. So this is going to sound like an odd</p> <p>9 couple questions, but at some point the City and the</p> <p>10 plaintiff, my clients, entered into a settlement</p> <p>11 mediation discussion and we provided a document to</p> <p>12 them. Have you been shown a copy of the document we</p> <p>13 gave?</p> <p>14 A. No.</p> <p>15 Q. Okay. I have no more questions, Officer</p> <p>16 Clark. Thank you so much for your time.</p> <p>17 MR. MATTHEWS: I have no questions.</p> <p>18 We will read and sign.</p> <p>19 (The deposition was concluded at</p> <p>20 3:24 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 State of Oregon)
2 County of Lane) ss.

3 I, Christine Oljace, CSR-RPR, a Certified
4 Shorthand Reporter for the State of Oregon, certify
5 that the witness was sworn and the transcript is a
6 true record of the testimony given by the witness;
7 that at said time and place I reported by stenotype
8 all testimony and other oral proceedings had in the
9 foregoing matter; that the foregoing transcript
10 consisting of 76 pages contains a full, true and
11 correct transcript of said proceedings reported by
12 me to the best of my ability on said date.

13 If any of the parties or the witness requested
14 review of the transcript at the time of the
15 proceedings, correction pages are attached.

16 IN WITNESS WHEREOF, I have set my hand this 7th
17 day of November 2017, in the City of Eugene, County
18 of Lane, State of Oregon.

19
20
21

Christine L Oljace

22 Christine Oljace, CSR-RPR
23 CSR No. 05-0397
24 Expiration Date: September 30, 2018
25

1 David Clark
2 McGowan, et al., vs. Stutesman, et al.
3 October 3, 2017
4

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18 I declare under penalty of perjury that the 76
19 pages referenced above are true and correct except
20 for such corrections as noted. Executed this
21 day of 2017.

22 |.....|

23 David Clark
24
25